

**IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE**

FILED
May 6, 1998
Cecil W. Crowson Appellate Court Clerk

JOE ERWIN and SUSAN ERWIN,)
as surviving parents and next of kin)
of BETHANY SUZANNE ERWIN,)
)
Plaintiffs/Appellants,)
)
VS.)
)
JAMES M. ROSE, WADE MATHENY,)
in his capacity as Sheriff of Maury)
County, Tennessee, MAURY COUNTY)
SHERIFF'S DEPARTMENT, MAURY)
COUNTY, TENNESSEE, and)
TRACY JOE LOVELL,)
)
Defendants/Appellees.)

Appeal No.
01-A-01-9706-CV-00248

Maury Circuit
No. 5932

OPINION ON PETITION TO REHEAR

The appellants have filed a petition to rehear based on the Western Section's opinion in *Sims v. Stewart*, No. 02A01-9706-CV-00123 (Jackson, Jan. 21, 1998). In *Sims* the court relied on an earlier case of *Dwight v. Tennessee Farmers Mut. Ins. Co.*, 701 S.W.2d 621 (Tenn. App. 1985), and decided that the policy in question "provides that reduction for worker's compensation benefits applies to damages and in no way affects the coverage available." We think that *Dwight* stated the opposite; it stated that coverage was reduced by any worker's compensation benefits paid or payable.

We respectfully overrule the petition to rehear.

HENRY F. TODD, PRESIDING JUDGE
MIDDLE SECTION

BEN H. CANTRELL, JUDGE

WILLIAM C. KOCH, JR., JUDGE